

# **INVESTIGATING OFFICER'S REPORT**

*(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)*

<b>1a. FROM: (Name of Investigating Officer - Last, First, MI)</b> 5 U.S.C. 552(b)(6)	<b>b. GRADE</b> LCDR/O-4	<b>c. ORGANIZATION</b> U.S. Fleet Cyber Command/U.S. TENTH Fleet	<b>d. DATE OF REPORT</b> 12 May 14
<b>2a. TO: (Name of Officer who directed the investigation - Last, First, MI)</b> Miller, Michael H.	<b>b. TITLE</b> VADM, USN Superintendent	<b>c. ORGANIZATION</b> United States Naval Academy	
<b>3a. NAME OF ACCUSED (Last, First, MI)</b> 5 U.S.C. 552(b)(6)	<b>b. GRADE</b> MIDN 1C	<b>c. SSN</b>	<b>d. ORGANIZATION</b> United States Naval Academy
			<b>e. DATE OF CHARGES</b> 25 Mar 14

*(Check appropriate answer)*

<b>4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)</b>	<b>YES</b>	<b>NO</b>
<b>5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>7a. NAME OF DEFENSE COUNSEL (Last, First, MI)</b> 5 U.S.C. 552(b)(6)	<b>b. GRADE</b> LCDR	<b>8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any)</b> 5 U.S.C. 552(b)(6)
<b>c. ORGANIZATION (If appropriate)</b> Defense Services Office		<b>b. GRADE</b> CIV
<b>d. ADDRESS (If appropriate)</b> Washington Navy Yard		<b>c. ORGANIZATION (If appropriate)</b> 5 U.S.C. 552(b)(6)
<b>d. ADDRESS (If appropriate)</b> Washington, DC		
<b>9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)</b>		
<b>a. PLACE</b> N/A	<b>b. DATE</b> N/A	

I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

<b>c. SIGNATURE OF ACCUSED</b> N/A		
<b>10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)</b>	<b>YES</b>	<b>NO</b>
<b>a. THE CHARGE(S) UNDER INVESTIGATION</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>b. THE IDENTITY OF THE ACCUSER</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>d. THE PURPOSE OF THE INVESTIGATION</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>g. THE RIGHT TO CROSS-EXAMINE WITNESSES</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL</b> N/A		

**NOTE:** If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c"). Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

## 12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)

NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
See attached			X	

b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.

X

13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.

DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)		
See attached - list of 27 exhibits	RLSO NDW	X	

b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED

X

14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)

X

15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)

X

16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL

X

17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM

X

18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED

X

19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d) (1).)

X

20. I RECOMMEND:

a. TRIAL BY ☐ SUMMARY☐ SPECIAL☐ GENERAL COURT-MARTIALb. ☒ OTHER (Specify in Item 21 below)

21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)

See attached IO report (30 pages).

22a. TYPED NAME OF INVESTIGATING OFFICER

b. GRADE

c. ORGANIZATION

5 U.S.C. 552(b)(6)

LCDR/O-4

U.S. Fleet Cyber Command/U.S. TENTH Fleet

d. SIGNATURE OF INVESTIGATING OFFICER

5 U.S.C. 552(b)(6)

e. DATE

12 May 14

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**ICO US v. 5 U.S.C. 552(b)(6)**

**Block 12a (witnesses called - all witnesses testified under oath)**

MIDN 5 U.S.C. 552(b)(6) USNA (Government)

MIDN 5 U.S.C. 552(b)(6) USNA (Defense)

FN 5 U.S.C. 552(b)(6) USS MASON (Defense)

Mr. 5 U.S.C. 552(b)(6), Civilian (Defense)

MIDN 5 U.S.C. 552(b)(6) USNA (Defense)

MIDN 5 U.S.C. 552(b)(6) USNA (Defense)

MIDN 5 U.S.C. 552(b)(6) USNA (Defense)

MIDN 5 U.S.C. 552(b)(6) USNA (Defense)

MIDN 5 U.S.C. 552(b)(6) USNA (Defense)

MIDN 5 U.S.C. 552(b)(6) USNA (Defense)

Ms. 5 U.S.C. 552(b)(6) Civilian (Defense)

**Block 13a (evidence considered)**

IO Ex 1: Charge Sheet

IO Ex 2: Appointing Order

IO Ex 3: Photos of House (21 photos taken by NCIS SA 5 U.S.C. 552(b)(6))

IO Ex 4: Photo of 4 women from house party in Nov 12

IO Ex 5: Photos of Room 4408 (5 photos)

IO Ex 6: Art 31b Rights and Statement of MIDN 5 U.S.C. 552(b)(6) of 21 Nov 13

IO Ex 7: Victim Reporting Preference Statement of 13 Nov 12

IO Ex 8: Photos purportedly from trip to NYC in May 12 (10 photos)

IO Ex 9: Drawing of location of dorm room to mate's desk

IO Ex 10: Marked up photo #20 (from group of photos in Ex 3)

IO Ex 11: DC objection to CA re MRE 412 (w/ 4 encls)

IO Ex 12: DC objection to IO re MRE 412 (w/ 4 encls)

IO Ex 13: Emails re logistics of 24 Apr 13 (2 pgs)

IO Ex 14: Emails re MRE 412 of 24 Apr 13 (2 pgs)

IO Ex 15: Emails re DC objection of 25 Apr 13 (4 pgs)

IO Ex 16: Photo of Facebook chat of 5 Nov 12

IO Ex 17: Facebook chat between 5 U.S.C. 552(b)(6) and 5 U.S.C. 552(b)(6) (2 pgs)

IO Ex 18: Honor Offense report (2 pgs)

IO Ex 19: Facebook messages between 5 U.S.C. 552(b)(6) and 5 U.S.C. 552(b)(6) (130 pgs)

IO Ex 20: Statement of MIDN 5 U.S.C. 552(b)(6) of 21 Nov 13

IO Ex 21: NCIS Summary and Facebook messages from 5 U.S.C. 552(b)(6) (5 pgs)

IO Ex 22: Schedule of USNA Football games of 2012

IO Ex 23: Photo of 4 people from house party in Nov 12

IO Ex 24: Emails between IO and CA re MRE 412 of 25 Apr 13 (3 pgs)

IO Ex 25: Government Comments on the Evidence

IO Ex 26: Defense Comments on the Evidence of 1 May 14

IO Ex 27: Defense Supplemental Materials of 7 May 14

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Block 21 (remarks)

Jurisdiction. The Government does have jurisdiction over the accused.

Delay. The original date of the Article 32 hearing was 10 Apr 14. The Defense requested a delay to 28 Apr 14. The Convening Authority granted this delay and noted that it was excludable delay attributed to the Defense.

Competence. In response to my question, defense counsel raised no issue during the hearing concerning either the accused's mental responsibility at the time of the alleged commission of the offenses charged or of the accused's competency to participate in his own defense.

Summary of Facts

MIDN <sup>5 U.S.C. 552(i)</sup> states that she first met MIDN <sup>5 U.S.C. 552(b)(6)</sup> in the summer (June or July) of 2011. She reports that they began dating shortly after meeting and dated continuously through January 2012. She states that they broke up for one week in January of 2012 but then got back together and dated continuously again until approximately June of 2012. MIDN <sup>5 U.S.C. 552(i)</sup> states that they got back together again in approximately October 2012, at her request, but then broke up for the last time only a few weeks later, in either late Oct or early Nov 2012.

MIDN <sup>5 U.S.C. 552(i)</sup> alleges that MIDN Gonzalez committed forcible anal sodomy on her in May of 2012 in New York City while they were alone at his aunt's house in upper Manhattan. MIDN <sup>5 U.S.C. 552(b)(6)</sup> told NCIS that they attempted to have consensual anal sex at this house in NYC in May 2012 but that she said it hurt and he immediately stopped. FN <sup>5 U.S.C. 552(b)(6)</sup> testified that both he and his girlfriend were present at the house on the night and morning in question and did not hear any disturbance or notice any problem.

MIDN <sup>5 U.S.C. 552(i)</sup> further alleges that MIDN <sup>5 U.S.C. 552(b)(6)</sup> committed sexual assault (vaginal penetration with his penis) on one occasion in October 2012 in her dorm room at USNA and also on another occasion in November 2012 at a house party (at the home of MIDN <sup>5 U.S.C. 552(b)(6)</sup> sponsor) near Annapolis, MD. She alleges that the sexual assault in her dorm room occurred while they were dating but that the one at the house party occurred after they broke up. MIDN <sup>5 U.S.C. 552(b)(6)</sup> told NCIS that they had sex numerous times in her dorm room over the course of their

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relationship and he does not recall any incident where she ever said no or asked him to stop. MIDN 5 U.S.C. 552(b)(6) confirmed to NCIS that they had sex at this house party in Nov 12 but he maintains that it was consensual and he states that they were both drinking alcohol that night. Several witnesses indicated that MIDN 5 U.S.C. 552(b)(6) was talking about wanting to get back together with MIDN 5 U.S.C. 552(b)(6) at the house party in Nov 12, which MIDN 5 U.S.C. 552(b)(6) denies. Several witnesses, including MIDN 5 U.S.C. 552(b)(6) stated that MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) were dancing with each other and kissing at the party. There was also testimony that MIDN 5 U.S.C. 552(b)(6) was upset that MIDN 5 U.S.C. 552(b)(6) was seen out with another woman shortly after this house party and was upset about him posting photos of himself with another woman on Facebook.

MIDN 5 U.S.C. 552(b)(6) filed a restricted report of sexual assault on 13 November 2012 and then changed it to be an unrestricted report on 5 November 2013. The exact date of the May 2012 allegation is unclear but may have been over Memorial Day weekend. The exact date of the October 2012 allegation is unclear. The date of the November 2012 allegation appears to be 3 November 2012 based upon the USNA football schedule.

Summary of witness testimony.

Note: Mrs. 5 U.S.C. 552(b)(6) was issued invitational orders by the Government but she declined to attend the hearing. The IO believes she may have been a relevant witness, as she is reportedly the first person to whom MIDN 5 U.S.C. 552(b)(6) reported the offenses. There was no authority to subpoena her, as a civilian witness, to this hearing. Although I determined this meant she was unavailable, the Government only had an unsworn statement, to which the Defense objected. As such, I did not receive or consider her unsworn statement and have no knowledge about what her testimony would have been.

**MIDN 5 U.S.C. 552(b)(6)**

Direct Exam

MIDN 5 U.S.C. 552(b)(6) first met MIDN 5 U.S.C. 552(b)(6) in the summer of 2011 (June). They started dating shortly thereafter. They kept dating until Jan 12 when they had a one week breakup. They got back together and dated continuously until June 2012. They went on Spring Break together to Key West with her family in 2012. The first incident was in May 2012 (discussed in detail below). She did not break up with him until they left for the summer because she needed time to step back, get away, and see the relationship for what it was. They were both doing

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training and on leave over the summer of 2012. Before they got back to school in Aug 12, she called him because one of his friends had died in a car accident. They had Facebook contact during the late summer and fall of 2012. She did not want to end on a bad note. She wanted to keep in touch with him and wanted to clear the air. She says she was not dating anyone else the summer of 2012.

She met MIDN 5 U.S.C. 552(b)(6) in summer 2012 and became friends with him. She said they were not dating but they were "talking". In the beginning of Oct 12, MIDN 5 U.S.C. 552(b)(6) asked her to be his girlfriend but she said no. Following turning down MIDN 5 U.S.C. 552(b)(6) in Oct 12, she decided to give MIDN 5 U.S.C. 552(b)(6) a second chance because she felt there were "loose ends". She thought he might have been seeing someone else but she asked him if he wanted to get back together and he said yes. The next incident of alleged assault occurred later in Oct 12. She says they broke up 2 days later and then had no contact for a week or two when MIDN 5 U.S.C. 552(b)(6) called to invite her to a party that MIDN 5 U.S.C. 552(b)(6) was having. This party was in early Nov 12. She decided to go with MIDN 5 U.S.C. 552(b)(6) to the party because she wanted to see everyone else she was friends with in 14<sup>th</sup> Company (his Company).

MIDN 5 U.S.C. 552(b)(6) picked her up, along with other MIDNs, and they drove to the party. The third incident was at this party. The next morning, MIDN 5 U.S.C. 552(b)(6) drove her back to the Academy. She claims she confronted him at the car about him having sex with her. She says they did not get back together again. She says a few days later she filed a restricted report. One year later she filed an unrestricted report.

Regarding the May 12 incident, she testified that she took a bus or a train up to NYC to meet MIDN 5 U.S.C. 552(b)(6). He was already there because he was on a tall ship during Fleet Week. She stayed with him at his aunt's house in Manhattan. On the Saturday night, they had some drinks and he had some friends over also. The next morning, Sunday morning, she had not been drinking. They got up and had breakfast - there was no one else home. They started having sex that morning, in the bed. He turned her over and her head was up against the head board and he started having anal sex with her. She says she immediately "retracted" but her head was against the head board so she could not go anywhere. She says she put her hand against him and said "stop" three times. She says he paused, she was crying, but then he kept going. She says she did not say anything else because she gave up and her head was under the pillow. It lasted for 5 minutes. She says she ran to the bathroom, sat on the toilet, and cried. She says

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she felt empty and used and betrayed. She testified that he had previously asked if she wanted to have anal sex and she had said no repeatedly.

She said that after this incident she pulled herself together because they were still dating. She thought he would get mad if she said anything. She thought that if he wanted to do that, he had the right to do it. She put on a happy face and acted like everything was fine. They did not break up after this incident. She did break up with him about one month later. It took her this long because she was not strong enough to see it for herself.

She testified that this was an emotionally abusive relationship, that MIDN 5 U.S.C. 552(b)(6) was very manipulative. He always made everything her fault. By having distance, she was able to step back and see the whole picture.

Regarding the Oct 12 incident, she had recently initiated getting back together with him. This was the night of her friends 21<sup>st</sup> birthday. This was a Saturday night. She had overnight liberty but she ended up staying in her dorm room anyway. She got back to her room probably around 2330 or midnight. Her roommates were both out. She went to bed. MIDN 5 U.S.C. 552(b)(6) came in the room and he was intoxicated. She knew he had been out drinking and she could smell the alcohol. He was 21. She had also seen him out at a bar when she was walking back. He climbed in her rack. She told him she was tired and was going to bed.

He started getting "handsy" with her. She kept pulling his hands off. She said "no, stop". She was wearing yoga pants and a t-shirt. He was wearing civilian clothes. He started pulling down her pants. She clenched her legs together really tight and said "stop" and she pushed on his arm. She was facing the wall and he was lying behind her. He rolled her over to face him. He got on top of her and pulled her legs apart and had sex with her. She did not say anything else - she just gave up and lay there. He finished and then she went to the bathroom and cried. She felt empty again. When they had gotten back together a couple of weeks earlier, she had told him that she didn't want to have sex under any circumstances so she was mad and felt that she "fell for this again".

Then she went back to her bed and climbed in. He was still there. She told him to sleep in her roommate's bed instead. He went to sleep in the roommate's bed. In the morning, he was gone because "he left to have lunch with another girl". She then called 5 U.S.C. 552(b)(6) and

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told her what happened because she talks to 5 U.S.C. 552(b)(6) about everything and she knew that she could help her put into words what she was feeling. She did not identify this Oct 12 incident as rape because they were dating so it didn't count. They also talked about the other girls that he was seeing.

About 2 days after the Oct 12 incident, she broke up with him. She told him it was because she didn't want to have sex and she also told him she knew he was seeing other girls. They broke up for both reasons - the unwanted sex and him seeing other girls.

Regarding the Nov 12 incident, it was after a football game. MIDN 5 U.S.C. 552(b)(6) called MIDN 5 U.S.C. 552(b)(6) and invited her to a party. She was feeling lonely and that she had no friends at this time. He called and invited her to a party with his 14<sup>th</sup> Company friends. He picked her up and drove her to the party. She says she planned to avoid him at the party. There were about 30 people there. They played beer pong. She says she told some of the women at the party (5 U.S.C. 552(b)(6) 5 U.S.C. 552(b)(6)

5 U.S.C. 552(b)(6) etc.) that she wanted help staying away from MIDN 5 U.S.C. 552(b)(6) because she gets "flirty" when she drinks. *[This is a notable inconsistency with many other witnesses who all said she was talking about whether she should get back together with him.]* She and MIDN 5 U.S.C. 552(b)(6) ended up dancing together and kissing. Then she backed off and went to sit with another friend.

She had been drinking and felt nauseous. She was drunk. She went into the bathroom and threw up. MIDN 5 U.S.C. 552(b)(6) followed her into the bathroom and was there when she threw up. She then wanted to go to sleep. She saw MIDN 5 U.S.C. 552(b)(6) in a different back room and then she went into a different room. She was with MIDN 5 U.S.C. 552(b)(6) and they together asked MIDN 5 U.S.C. 552(b)(6) if he had a blanket and he said no. She lay down on the floor and went to sleep. She has a good memory - was not so intoxicated that she could not remember. He left and then came back. He lay down next to her and started getting "handsy" with her again.

She kept moving his hand off and scrunched up to get him to stop. She did not get up because she felt trapped. She thought he would get the point and go away - even though this had happened before - but she had not admitted it to herself before that she had been raped because they were dating before. She thought rape was only like in the movies, down a dark alley and with a stranger. He started pulling off her pants and then she said "no, stop" three times. He did not say anything but he kept pulling down her pants and then entered her from behind. She just curled up and lay there. He finished and then left.



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She pulled up her pants and went to sleep. She felt sad. She felt alone and "like I had fallen for it again". This time she actually felt raped because they were at a party, they were drinking, and they were not dating. During the first 2 incidents they were dating. This third time they were not dating. She saw training at USNA that showed people at a party, with alcohol, and "that is where rape happens".

The next morning, MIDN 5 U.S.C. 552(b)(6) drove her back to USNA. She confronted him outside of the car about having sex with her and he got mad and suggested she had sex with someone else. That same day she spoke to 5 U.S.C. 552(b)(6) and told her everything. 5 U.S.C. 552(b)(6) asked if she felt she had been raped and she said yes. [On cross exam, she says she may have spoken to 5 U.S.C. 552(b)(6) days later because there is Facebook evidence that she was joking with him two days later, on 5 Nov 12.] Then she talked to the Chaplain and then she filed a restricted report.

She chose a restricted report because of the football rape case that had national media coverage and was the talk of the school. She thought if she filed an unrestricted report the media would be all over it. She did not want that attention. [On cross exam, she admits there was no media attention on the football case in Nov 12 but says the whole school knew and that is the attention she meant.]

They had no further contact until Jan 13. He called her then to see how she was doing. He was at West Point at this time. She answered the phone because she thought maybe he would apologize. He said he was getting involved in bible study and becoming a better Christian. This made her feel paralyzed and nauseous. She said she had to go and hung up. She then called 5 U.S.C. 552(b)(6) and told her he called and what he said. 5 U.S.C. 552(b)(6) had her husband, CDR 5 U.S.C. 552(b)(6) call MIDN 5 U.S.C. 552(b)(6) and tell him not to call her anymore. She did not ask for this call but did agree to it.

One year later, she made the report unrestricted in Nov 13. She had spoken to another friend who was also a victim of sexual assault and she was able to handle her case in the conduct system. The conduct system is run by MIDNs but depending on what happens it could go straight to the Deputy Commandant. There are different levels of offenses that get handled by the conduct board, such as excessive drinking or hitting. Conduct board can result in getting kicked out of the Academy. She thought she could take her case to the conduct board and that is why she filed an unrestricted report. She knew media would not be involved in a conduct case. She wanted him to be

held accountable. She says she extensively researched this and was assured she could handle this case through the conduct board and then after she opened it up she was told she could not do this case in the conduct board system.

#### Cross Examination

Her roommates were <sup>5 U.S.C. 552(b)(6)</sup> and <sup>5 U.S.C. 552(b)(6)</sup>. They are friends but don't hang out together away from the Academy. She generally gets "B" grades. She has received training on sexual assault since she started at the Academy - throughout her time at the Academy. She never received training about spousal rape but has received training about consent and non-consent. She learned that saying no or stop means you did not consent and that both parties have to agree for it to be consent. She never received training that said a boyfriend could do whatever he wanted to a girlfriend. Now she understands that a boyfriend could rape a girlfriend. She first discovered this after she decided to report this in Nov 12. The source of this information to her was <sup>5 U.S.C. 552(b)(6)</sup> her mentor. She had no idea what a rape kit was or how or why it was done.

In the summer of 2011, when they first started dating, she found his sister on Facebook and called her to arrange a surprise meeting with him and his family in AL. She called his sister and mother to surprise him when he was home seeing his family. This was the first time she had spoken to either of them. She denies that the purpose of this visit was to investigate if he was seeing someone else at home.

One time MIDN <sup>5 U.S.C. 552(b)(6)</sup> forgot her birthday. This was her 20<sup>th</sup> birthday (Dec 2011). She was really upset about this. She talked to her roommates and MIDN <sup>5 U.S.C. 55</sup> about this. They had been dating for 6 months already and she resented this. She was angry. They did not break up over this.

This was an emotionally abusive relationship but he never physically assaulted her. He was very manipulative but she did love him. At the time, she thought he loved her but now she does not think he did love her. There were times that she was happy with the relationship. He did treat her well at times and was affectionate with her. He stood up for her.

The Jan 12 breakup was because he said he got a call from her best friend from high school and she said bad things about her from high school, such as that she was unfaithful and promiscuous in high

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school. None of that was true. They got in a fight over this because she did not believe anyone had even called him. One week later they got back together.

They went on Spring Break together with her family over Spring Break (March) in 2012. They had arguments later because her dad did not approve of him. Her dad and MIDN <sup>5 U.S.C. 552(b)(6)</sup> did not get along well on Spring Break and had problems afterwards also.

She told MIDN <sup>5 U.S.C. 552(b)(6)</sup> in Oct 12 that they broke up because he was cheating, but in her mind she also knew that he assaulted her. She told NCIS that she had both reasons but that she only told him about the cheating allegation. If NCIS has notes that only say the breakup was because of cheating, then NCIS missed that it was also for the assault. She did not tell MIDN <sup>5 U.S.C. 552(b)(6)</sup> that the breakup was because of assault because she did not want to make him mad.

He did give her a promise ring when they were dating. He had told her it was a precursor to an engagement ring. She kept it for a while after they broke up because he owed her \$700. He owed her the money because of a mission trip that they paid for but never went on. It was an online mission organization. She eventually returned the ring but never got the money. Mrs. <sup>5 U.S.C. 552(b)</sup> is the one who advised her to keep the ring until she got her money back. He was her longest and most serious relationship. She is still angry.

She has known Mrs. <sup>5 U.S.C. 552(b)</sup> since she started at USNA. She met her through bible study and then she became her mentor. Mrs. <sup>5 U.S.C. 552(b)</sup> used to run a bible study. The bible study talks about sex and culture and how women dress and present themselves. Mrs. <sup>5 U.S.C. 552(b)</sup> advises Christian women to delve into what the bible says about sex and she advocates abstinence until marriage.

[The VLC objected to questions about underage drinking other than the incidents in question unless it was before April 2012 because of the 2 year statute of limitations at conduct board.]

She has been drunk before and has blacked out once before. She found out she blacked out because other people told her things she did that she did not remember. She usually gets sick when she drinks. She can get sick even just being tipsy. She views intoxication as "tipsy, drunk, obliterated, and then blacked out."

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It usually takes her 4-5 drinks to get drunk. It varies depending on how much she was running at the time or how much she ate that day.

Regarding May 12 incident, she was in NYC only Friday - Sunday and she was on authorized liberty the whole time. She remembers the whole weekend. They hung out with one of his friends named 5 U.S.C. 552(b)(6) who lives there. His aunt and cousin were also there Friday night but they left on Saturday. On Saturday night, they were alone. [This is inconsistent with what FN 5 U.S.C. 552(b)(6) said.] Some friends were over on Saturday night to drink but they did not stay over - she does not think it was 5 U.S.C. 552(b)(6). She never asked anyone to sign in for her at Bancroft Hall. She was on authorized liberty.

She says that he did not ask about anal sex before it started. Before the assault, she was on her back and they were having consensual vaginal sex. He turned her over and then entered her anus. She was ok with being turned over because she thought he would continue vaginal sex from behind. He did not say anything at all. He just entered her. She did not expect that. She "retracted". She said "oww" and "no, stop, probably three times" and moved her hands behind her and pushed his chest away. It was painful. He stopped for a second, he pulled out, and then went back in. She said no, stop "louder than speaking level but not at a shriek". If anyone else was in the apartment they would have heard her. It was loud enough for him to hear. He never said anything and he never responded.

When she pushed against him, it was not hard enough to push him off. He had his hands on her waist at this time. He was both pushing her back down and lifting her hips up. She could have escaped if she had tried. She did not try to escape because they were dating and she did not want to make him mad. She thought he would call her dramatic. She did not want to upset him. She wouldn't say she went along with it but she didn't want him to get mad at her. She was not participating. She did not have any bruises. She was not forcibly overpowered. She was bleeding from her anus after this but did not seek any medical attention. She bled only that day or maybe the next day also. She has never reported the anal bleeding before.

They had a tumultuous relationship and he used to yell at her a lot. She thinks other people from his Company would have heard him yell at her in the dorm.

He finally stopped and finished. He lay down and did not say anything. She went to the bathroom and cried. Then she came back to

the room and they both got ready for the day. She did not say anything to him about that incident. They walked around the city and got food. She was "forcibly trying to be normal" and "putting it on that she was okay". After they walked around and got food, she went and got on the bus to return to the Academy.

When they have normal liberty at USNA, they have to sign back in before midnight. You sign in to taps by midnight, with the CDO, which is a paper or log on the CDO's door. There is no log for the time - you just have to sign before midnight. She does not recall what the rules were for the period of time surrounding the May 12 incident - whether she had overnight liberty on a school night, for example. She maintains that she only went to NYC from Friday to Sunday. She was shown numerous photos (IO Exhibit 8). She states that some were from NYC but she does not recall the rest. Despite the number of outfit changes, she maintains that she was only in NYC from Friday to Sunday. *[She would not acknowledge that a specific photo was in a subway, though it does appear to be in a subway somewhere. FN <sup>5 U.S.C. 552(b)(6)</sup> later confirmed that the photos in question were from that weekend in NYC.]*

DC then asked her if she had ever had someone sign in for her at Bancroft Hall or if anyone signed in for her when she was in NYC without permission. [VLC objected to this question on the grounds that it could incriminate her client. The IO read the witness her rights for Art 107, false official statement, and Art 86, UA. The witness asked to consult with her VLC. Following this break and their consultation, she elected to invoke her right to remain silent.]

DC then asked her if she knew someone named <sup>5 U.S.C. 552(b)(6)</sup> and the witness tried to invoke her right to remain silent again. After being told that this was not an incriminating question, she then said she knew him and had known him since plebe year and they were friends.

After the May 12 incident, they did not break up. She felt betrayed and used. They were still technically dating. They rarely spoke on the phone after the May 12 incident until the June 12 breakup. She said they next saw each other not again until school started back in Aug 12. When asked by DC if she ever visited him and his father in Virginia Beach, she said she did not remember that until now but that yes she might have visited him. She was vague about her recollection but then confirmed that she does recall visiting him in Virginia Beach between the May 12 incident and then the June breakup. She said she does not remember his dad being there. She does not recall who initiated the visit or how she got there. She admits that she

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willingly went to visit him there. She does not recall going to his hotel. She does not remember what she was thinking during this visit. *[The father's testimony provides conflicting details and is a much more credible account of the weekend. The father remembers this weekend clearly because he thought it would just be father-son time and his son's girlfriend showed up unannounced and uninvited.]*

The break up occurred shortly after this Virginia Beach visit. She had been talking to her friends and she found out another lie that MIDN 5 U.S.C. 552(b)(6) told her about another girl named Summer. She confronted Summer about her relationship with MIDN 5 U.S.C. 552(b)(6) and then decided that MIDN 5 U.S.C. 552(b)(6) had been lying to her. When asked why she broke up with him, she said "it all tied together". It was partly because of the NYC incident and partly because of the stories about other girls. At this time, she still did not consider that she had been assaulted, but she felt used.

When they returned to school in Aug 12, she did not have much interaction with him until she went to his room in Oct 12 to ask him to get back together. She thinks it was mid-October but does not recall the date. Despite what happened in May 12, she wanted to get back together with him in Oct 12.

The Oct 12 incident was about 2-3 weeks after they got back together. It was a Saturday night (5 U.S.C. 552(b)(6) birthday). She was not drinking that night. They have a watch who walks around Bancroft, who stands at the mate's desk. Neither of her roommates were there that night - they are both from the area and were probably at home. She was in her bed and he came in and climbed into her rack.

She had seen him out in town earlier in the night. He was with another girl, 5 U.S.C. 552(b)(6), and she was mad about that. When MIDN 5 U.S.C. 552(b)(6) came to MIDN 5 U.S.C. 552(b)(6)'s room, she was on top of her sheets and not in the sheets. He climbed up and lay down next to her. He had been to her room and her bed before. She smelled alcohol on him. She was surprised that he was there. He started getting touchy feely with her and putting his hands on her. She pulled his hand off. He did not stop. He pulled down her pants and rolled her onto her back. She did not resist being rolled over onto her back. She then clenched her legs closed. He kept pulling her pants down and she kept pulling them up. She was getting anxious and nervous. She said "no" twice and "stop" once.

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He pulled her pants down to her knees and then entered her from behind. She just gave up and lay there. She did not yell out for any help because they were dating and she did not want him to get mad at her. This was the first time they had sex since they had gotten back together. When they had gotten back together, she had told him they would not have sex at all. When she came back from the bathroom, she did not say anything to him and did not report the incident. She got back into the rack with him and told him to sleep in the other bed. She felt used and empty. She did not have any injury or discomfort from this incident. In the morning when she woke up, he was gone. He had told her he was going to have lunch with a friend. She later found out that he had lunch with another woman (5 U.S.C. 552(b)(6)). He did not tell her it was a woman. The woman approached her the next day and told her that he had asked her out. She broke up with him the next day. The incident was Saturday. The lunch with the other woman was Sunday. The other woman approached her on Monday and told her she had been asked out. The breakup was Tuesday. The breakup was due to the other woman and the assault.

She told Mrs. 5 U.S.C. 552(b) that they had sex and that he came to the room but did not say she was assaulted. She had talked to Mrs. 5 U.S.C. 552(b) about being strong and not having sex again. She did not view this as sexual assault at the time because they were dating.

Between Oct 12 incident and Nov 12 incident, they had no contact at all. He called her the day of the party to invite her to the party. She thinks it was the day of a Navy football game. She made her restricted report in Nov 12 to the head of SARC. She did not report to anyone named 5 U.S.C. 552(b)(6). She does not remember saying it was a specific game. This was about a month after the incident in her room. She agreed to go to the party with him because she wanted to see everyone else who would be at the party. He picked her up and drove her to the party. She did not want to get back together with him at this time. She had it firm in her mind that they were not getting back together. She was nervous to be with him but not afraid.

She said she told her female friends to help keep her away from MIDN 5 U.S.C. 552(b)(6) when she arrived at the party. She arrived around 2000 or 2100. She drank 3 beers and had one shot. She felt nauseous. She was feeling loose. She was coherent, could walk, and could carry on conversation. She later vomited (around 2300 or midnight) but she vomits before she is really drunk. She had a few drinks and then decided to dance with MIDN 5 U.S.C. 552(b)(6). It was only one dance and there were other people around. They also kissed. She was not thinking

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about the other two incidents at this time. She was attracted to him but did not want to date him again. The dancing and kissing was consensual.

She had told her friends to help her keep her distance from him. She said she never talked to anyone about getting back together with him. She was worried that he might manipulate her into starting to talk to him again. She thought she could handle herself and avoid being seduced again. She did not think he would try to have sex with her against her will.

When she was lying down on the floor in the back room, he kept pulling off her pants and she kept pulling them back up. She pushed against him. She pushed as hard as a 6 out of 10. He did not say anything but he kept touching her. He pulled down his pants and entered her from behind. She clenched her legs, he opened them, and entered her. She said "no, stop", but then she gave up and just lay there. She was not participating. She did not scream for help because she did not want to cause a scene. She was worried that he would manipulate people and say it was her fault. She was not afraid he would physically hurt her. She said "no, stop" more loudly this time than the other two times. This was not painful. He finished and got up and left. She put on her pants and went to sleep.

After the Nov 12 incident, she had a confrontation with MIDN 5 U.S.C. 552(b)(6) outside of the car. She asked him "did you have sex with me last night?" because she wanted to confront him but he said no. It was a rhetorical question. She then got mad and left.

She called 5 U.S.C. 552(b)(6) later that night (Sunday) and made a restricted report a few days later. 5 U.S.C. 552(b)(6) asked her if she felt she had been raped and she said yes. She saw this last incident as rape because of the training video she saw that portrayed a party, with alcohol, and people who were not dating. These 3 red flags helped her identify this incident as rape. The Oct 12 incident did not seem like rape to her because she was not drinking, they were not at a party, and they were dating.

She did not request a Victim Advocate, but just spoke to the SARC and Chaplain. Before she made her restricted report, she also talked to 5 U.S.C. 552(b)(6) (sp?) because she was her best friend. She and 5 U.S.C. 552(b)(6) conference called 5 U.S.C. 552(b)(6) to discuss this issue. 5 U.S.C. 552(b)(6) encouraged her to make the report "if that was on her heart".



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She also told 5 U.S.C. 552(b)(6) in Dec 2012, which was after she made the restricted report. She later also told 5 U.S.C. 552(b)(6) and 5 U.S.C. 552(b)(6), her roommates. She then told more people after she made it unrestricted in Nov 13. She told her current boyfriend, MIDN 5 U.S.C. 552(b)(6) (sp?). She never told anyone she was thrown on the bed and raped. She might have said she froze because she meant she gave up.

She admits that she was joking with MIDN 5 U.S.C. 552(b)(6) on Facebook on 5 Nov 12, as per IO Exhibit 16. She did not remember this until they showed it to her. *[Previously she said they had no contact after this party because she knew she had been raped.]* She said they had no contact after she made the restricted report on 13 Nov 12. She might have had contact with him after the party (on 3 Nov 12). She states that the FB banter might have been before she talked to 5 U.S.C. 552(b)(6) which is when she realized she had been assaulted. *[This is inconsistent with her prior testimony that she called 5 U.S.C. 552(b)(6) that Sunday afternoon.]* She then says it took her 10 days, from 3 Nov 12 to 13 Nov 12, to "solidify her thoughts" and "realize" that she had been sexually assaulted on 3 Nov.

She next saw MIDN 5 U.S.C. 552(b)(6) at the Christmas party of his sponsor mother's work in Dec 2012. It was at Fort Meade. She says that his sponsor mother, "Ms. 5 U.S.C. 552(b)(6)", invited her months before and she had no idea that MIDN 5 U.S.C. 552(b)(6) would also be there. She says Ms. 5 U.S.C. 552(b)(6) asked her to bring the acapella group to sing at the party and she had agreed months before. She was surprised to see MIDN 5 U.S.C. 552(b)(6) at his sponsor mother's Christmas party. *[This is inconsistent with the testimony of Ms. 5 U.S.C. 552(b)(6)]*

She defriended MIDN 5 U.S.C. 552(b)(6) on Facebook but does not recall when. She says she did not defriend him because he posted a photo of himself with another woman. Rather, she says it was for "many reasons" and she does not remember all of them. When asked by DC if she defriended him because of the photo of the other woman, she replied "you can't prove that" or words to that effect.

When asked if she was inquiring around about whether MIDN 5 U.S.C. 552(b)(6) was dating anyone towards the end of 2012 or early 2013, she denied it, but then she stated that she might have been because she is "interested in everyone who is dating anyone".

When he called her in Jan 2013, she had caller ID and knew it was him when she answered. She thought he was calling to apologize but he instead said he had found religion so she got mad and said she had to

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go. She said he did not call to tell her to stop gossiping about him. He did not threaten her. She denies telling 5 U.S.C. 552(b)(6) that she was being harassed. She does not remember telling him not to call but she is sure that she did at some point. She knew CDR 5 U.S.C. 552(b)(6) would call him and she was okay with that but did not specifically request it.

She has known MIDN 5 U.S.C. 552(b)(6) since before she was dating MIDN 5 U.S.C. 552(b)(6). They were good friends. She found out MIDN 5 U.S.C. 552(b)(6) was dating MIDN 5 U.S.C. 552(b)(6) from FB status update. She thought MIDN 5 U.S.C. 552(b)(6) was making a mistake because MIDN 5 U.S.C. 552(b)(6) had raped her. She had tried to warn MIDN 5 U.S.C. 552(b)(6) away from MIDN 5 U.S.C. 552(b)(6) previously. She told MIDN 5 U.S.C. 552(b)(6) via FB that he was not a good guy and was very manipulative. [IO exhibit 17 pertains.] She later approached her in person and told her that he pressured her in bed, sexually. She is certain she warned MIDN 5 U.S.C. 552(b)(6) about sexual pressure. [This is inconsistent with what MIDN 5 U.S.C. 552(b)(6) said.] She also tried to get MIDN 5 U.S.C. 552(b)(6) to warn MIDN 5 U.S.C. 552(b)(6). She later defriended MIDN 5 U.S.C. 552(b)(6) on FB. She learned of their engagement from a friend.

She was a member of Baptist College Ministry (BCM). MIDN 5 U.S.C. 552(b)(6) also attended this group. She has been there with both of them but never sat behind them.

She got an MPO against MIDN 5 U.S.C. 552(b)(6) after the unrestricted report. She did ask for it because she wanted him to stay away from her. They never had a confrontation between Nov 12 and Nov 13. She did not know about the option of MPO until Nov 13. Since the MPO, she also avoids him and stays out of his Company area. She has never tried to make him violate it by going near him.

She started with a restricted report because of the national media attention around the football player rape case at USNA. When considering her options in Nov 12, she decided to go with restricted because she did not want all the national media attention that the other case had. When confronted with the fact that there was no media attention on the football case until 2013, she clarified and said it was attention at school that she did not want. She thought everyone at school knew about the other case in Nov 12.

She decided to go unrestricted because she wanted him to go to the conduct board to possibly get kicked out of school. She did not want a trial. Now, she wants this case to go to trial and wants to see him punished. She did ask MIDN 5 U.S.C. 552(b)(6), the alleged victim in the football

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case, about the Art 32 process. She sought her out to find out how she felt but not about the questions asked.

She says she started talking to MIDN 5 U.S.C. 552(b)(6) in summer of 2012. She asked MIDN 5 U.S.C. 552(b)(6) to be her boyfriend again in Oct 2012 after she was done talking to MIDN 5 U.S.C. 552(b)(6). There was no overlap. She felt she was supposed to be with MIDN 5 U.S.C. 552(b)(6) and it "might have been God's plan" for them to be together.

DC asked her about the prior allegation against her at the conduct board. DC argued this was relevant regarding prior instance of dishonesty. [*The IO allowed the Defense wide latitude on cross examination.*] She was accused of being in the wrong PT gear. The Dep Cmdt thought she lied, but she was found not guilty at the conduct board. [DC asked her if she had lied to the Dep Cmdt so the IO read her Art 31b rights for Art 107 and she invoked her rights. DC was told to move on.]

DC also asked her if she ever missed urinalysis. [*Again, the IO allowed wide latitude during cross examination of this witness.*] DC argued this was relevant regarding prior instance of dishonesty. She said she got excused once during Plebe year. She was sick (GI issues) so her Chief excused her. [When asked if she had lied to get out urinalysis because she had actually smoked marijuana, she was read her Art 31b rights for Art 112a and she invoked her right to remain silent.]

She said she has received no extra liberty or privileges since filing the unrestricted report. She goes to counseling at MDC.

She made her unrestricted report statement to NCIS SA Lisa Werner. She intended to report all 3 incidents, but she does not remember exactly what she told her. She did it unsworn but does not remember if she was offered to make it sworn. SA 5 U.S.C. 552(b)(6) told her not to discuss the case, but she did speak to a few MIDNs about the case (MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6)). She did not tell anyone details about the case and never discussed details of the case on Facebook. She did tell people that she filed a case but never talked on open FB wall about case.

She does not remember details of her conversation with NCIS or the TCs. When asked if she told either NCIS or the TCs that she was kissing MIDN 5 U.S.C. 552(b)(6) at the Nov 12 party, she said: "if they asked, I did not deny it".

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Since these incidents, she has had no change to grades. She is still on track to graduate and she service selected what she wanted (USMC).

MIDN 5 U.S.C. 552(b)(6)

MIDN 5 U.S.C. 552(b)(6) is her fiancée and they have been together since July 2013, but got engaged on 24 Mar 14.

She knows MIDN 5 U.S.C. 552(b)(6) They were on track team together freshman year and attended bible study together over 4 years. They used to be good friends, not friends anymore because MIDN 5 U.S.C. 552(b)(6) "slandered" MIDN 5 U.S.C. 552(b)(6)

She was at the party in Nov 12. She saw both MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) at the party. MIDN 5 U.S.C. 552(b)(6) came and talked to her and MIDN 5 U.S.C. 552(b)(6) upon arrival at party. MIDN 5 U.S.C. 552(b)(6) was talking about whether or not she should get back together with "Gonzo" (MIDN 5 U.S.C. 552(b)(6) again. She later saw MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) kissing and holding hands at the party and MIDN 5 U.S.C. 552(b)(6) appeared to be following MIDN 5 U.S.C. 552(b)(6) around. She spent some time in the bathroom with MIDN 5 U.S.C. 552(b)(6) who was sick.

She spoke to MIDN 5 U.S.C. 552(b)(6) on the following Tuesday at Baptist College Ministry (BCM). During the social period before BCM starts, they were both on stage together saving seats. She asked MIDN 5 U.S.C. 552(b)(6) what happened with 5 U.S.C. 552(b)(6) that night. She states that MIDN 5 U.S.C. 552(b)(6) responded: "I guess I can't get back together with him because my roommate saw him out with another girl."

She and MIDN 5 U.S.C. 552(b)(6) started dating at NAPS in July 2013. MIDN 5 U.S.C. 552(b)(6) talked to her about the relationship with MIDN 5 U.S.C. 552(b)(6) in Aug 13 over Facebook. Said she was warning her about him. MIDN 5 U.S.C. 552(b)(6) told her that MIDN 5 U.S.C. 552(b)(6) asked to help break them up.

MIDN 5 U.S.C. 552(b)(6) later came to her room when school started back in the fall of 2013 to talk about him again. It was a Tues night after BCM. She had brought MIDN 5 U.S.C. 552(b)(6) with her to BCM. MIDN 5 U.S.C. 552(b)(6) was also at BCM and was sitting directly behind the 2 of them. MIDN 5 U.S.C. 552(b)(6) was staring at them. They had no interaction at BCM, but later MIDN 5 U.S.C. 552(b)(6) came to her room and talked about "petty relationship problems" she had previously with MIDN 5 U.S.C. 552(b)(6) Among her complaints were that her parents did not approve of him, that he bought her a promise ring, and that he forgot her birthday. This witness was adamant that MIDN 5 U.S.C. 552(b)(6) never said anything about rape, sexual assault, or even sexual

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pressure or pushiness in bed. [This is a notable inconsistency with what MIDN 5 U.S.C. 552(b)(6) said.]

On multiple occasions, MIDN 5 U.S.C. 552(b)(6) has been seen walking behind them or picking the workout rack next to them.

FN 5 U.S.C. 552(b)(6)

USS MASON in Norfolk. He used to attend USNA, went to NAPS 1 year, then USNA for 3 years. He got kicked out for academics.

He knows MIDN 5 U.S.C. 552(b)(6) They became friends at NAPS and have been friends for 5 years. He also knows MIDN 5 U.S.C. 552(b)(6) because she dated MIDN 5 U.S.C. 552(b)(6) for a year or more.

He goes to NYC every May to visit family. He recalls NYC in May 12 - both MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) were there at the same time. They all spent a few days together hanging out and also spent one whole night with them.

The photo (8-2) is of them all in subway. MIDN 5 U.S.C. 552(b)(6) MIDN 5 U.S.C. 552(b)(6) his girlfriend 5 U.S.C. 552(b)(6) and him. It must have been taken in May 12 because this is the only time the four of them hung out. The photo was taken in a subway - probably 42<sup>nd</sup> street. Photo (8-3) was taken at MIDN 5 U.S.C. 552(b)(6) aunt's house. All 4 spent night together. It was either Friday or Saturday night, but he remembers that MIDN 5 U.S.C. 552(b)(6) had to go to the bus to leave the next day. [This is a notable inconsistency because MIDN 5 U.S.C. 552(b)(6) stated that the two of them were alone at the aunt's house.] Photo (8-8) is them without their shirts and was also taken at his aunt's house.

They all slept over at his aunt's house one night. Three of them were drinking but MIDN 5 U.S.C. 552(b)(6) was not drinking. His girlfriend got sick and MIDN 5 U.S.C. 552(b)(6) took care of her. At bedtime, they went to their separate rooms. He was with his girlfriend and MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) were together in separate bedrooms. When he woke up the next morning, he heard MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) laughing and whispering around 0800. He never heard crying. He never heard anyone say no or stop. His room was next to the bathroom. When he got up, MIDN 5 U.S.C. 552(b)(6) had already left to take MIDN 5 U.S.C. 552(b)(6) to the bus stop so he did not see MIDN 5 U.S.C. 552(b)(6) that day. This might have been Memorial Day weekend and they may have had an extra day off from school.

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Mr. 5 U.S.C. 552(b)(6)

He lives in Alabama. He is retired from the Army. He is the father of MIDN 5 U.S.C. 552(b)(6)

He saw his son on 8 Jun 12 in Virginia Beach. Son came from NYC on an Ecuadorian ship that sailed from NYC to Va Beach. He picked his son up from the ship. On the morning of 9 June, he went for a run with his son. They had planned to go to Latino concerts on the beach. While at the concerts, he turned around and saw his son standing with MIDN 5 U.S.C. 552(b)(6). This was to his surprise because he did not know MIDN 5 U.S.C. 552(b)(6) was coming and it was supposed to be a father-son visit. His son said he did not know she was coming either. He had no idea how she "tracked us down". She claimed to have come over from a Darius Rucker concert on another part of the beach. Father and son went back to their hotel alone. Later that night, she showed up really drunk at their hotel room around midnight and asked to sleep over with them. Mr. 5 U.S.C. 552(b)(6) said no and his son escorted her downstairs and to the car of a friend of hers.

The next day, his son was sailing out to Baltimore. Mr. 5 U.S.C. 552(b)(6) and his son picked MIDN 5 U.S.C. 552(b)(6) up and they all went to Chilis for lunch before he dropped his son off. His son and MIDN 5 U.S.C. 552(b)(6) seemed normal - they were cuddling and kissing.

MIDN 5 U.S.C. 552(b)(6)

She knows both MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) and knows that they dated. Their relationship was "kinda patchy". She knows they are not dating now but does not know why they broke up. She also knows MIDN 5 U.S.C. 552(b)(6)

She says that MIDN 5 U.S.C. 552(b)(6) was dating MIDN 5 U.S.C. 552(b)(6) at the same time she was dating MIDN 5 U.S.C. 552(b)(6) but she admits that she only knows that because MIDN 5 U.S.C. 552(b)(6) told her.

She attended MIDN 5 U.S.C. 552(b)(6) party in Nov 12. This was the only party she ever attended at this house. She was sober and was a Designated Driver that night - she does not drink. She saw both MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) at the party. She says that MIDN 5 U.S.C. 552(b)(6) asked her to talk to MIDN 5 U.S.C. 552(b)(6) about getting back together because she still had feelings for him, wanted to get back together, they both did stupid things, she cheated but wanted him back, and so she asked her to put in a good word for her. [This is consistent with what MIDN 5 U.S.C. 552(b)(6)

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*stated but is inconsistent with what MIDN <sup>5 U.S.C. 552(b)(6)</sup> stated. This witness appears very credible and has no apparent motive to lie.]*

This witness says she told MIDN <sup>5 U.S.C. 552(b)(6)</sup> that MIDN <sup>5 U.S.C. 552(b)(6)</sup> did not want anything to do with her. She says she knew that because he had told her that. She says she tried to keep them apart at the party to help him out.

She also said that MIDN <sup>5 U.S.C. 552(b)(6)</sup> had previously spread rumors that she and MIDN <sup>5 U.S.C. 552(b)(6)</sup> were dating but it was not true. She also said that MIDN <sup>5 U.S.C. 552(b)(6)</sup> asked her roommates (Elise <sup>5 U.S.C. 552(b)(6)</sup> and 5 U.S.C. 552(b)(6) and 5 U.S.C. 552(b)(6) if she was dating MIDN <sup>5 U.S.C. 552(b)(6)</sup>. This was around the time of the party and after the party. This was fall of 2012 and spring of 2013. MIDN <sup>5 U.S.C. 552(b)(6)</sup> was at West Point Spring of 2013 and questions had ended by then.

**MIDN** 5 U.S.C. 552(b)(6)

He knows MIDN <sup>5 U.S.C. 552(b)(6)</sup>. He first met him through MIDN <sup>5 U.S.C. 552(b)(6)</sup> and knows him as the ex-boyfriend of MIDN <sup>5 U.S.C. 552(b)(6)</sup>. He knows MIDN <sup>5 U.S.C. 552(b)(6)</sup>. He first met her over protramid, they had a relationship in the summer of 2012. By July 2012, they were talking nightly. They used to visit each other often, went to concerts, went out to dinner, and he met her parents. She was introduced as her friend, not her boyfriend. He met her roommates also. They were not officially dating at this time.

He wanted to make the relationship official in Oct 2012. He asked her to be his girlfriend but she said no, she did not want a relationship. She told him that she was talking to 5 U.S.C. 552(b)(6) and that God wanted her to date MIDN <sup>5 U.S.C. 552(b)(6)</sup>. This was in Oct 12. She never said she was assaulted. He is not sure she would have said it anyway, though she did hint that he was a bad boyfriend. She told him she smoked marijuana plebe year and avoided urinalysis by pretending to have food poisoning.

He would see her talking to MIDN <sup>5 U.S.C. 552(b)(6)</sup> in the dorm throughout the fall of 2012 and he thinks they were still dating. He thinks he was double-timed and MIDN <sup>5 U.S.C. 552(b)(6)</sup> is not trustworthy. He later admits that they were never officially dating and that she told him when she was getting back together with MIDN <sup>5 U.S.C. 552(b)(6)</sup>. He admits he was upset he wasted time on her and she did not reciprocate his feelings.

*[I don't think this witness added much value.]*

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MIDN 5 U.S.C. 552(b)(6)

He knows MIDN 5 U.S.C. 552(b)(6) They have been in the same company all four years at USNA. They first met at NAPS in the summer of 2009. He knows MIDN 5 U.S.C. 552(b)(6) He met her because she was dating MIDN 5 U.S.C. 552(b)(6) all of sophomore year (youngster year).

He observed them while they were dating. She was on their deck often, almost every day. She spent lots of time around their deck. She did his laundry and brought him food. They were very close and seemed to have a normal relationship. She also seemed clingy. She was around even more than he was and she hovered around their company area.

He was at the party in Nov 12. He had been to other parties there. There were probably four parties that semester at that house. MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) arrived together at the party in Nov 12. There were about 15-20 people at this party. They seemed like a normal couple at this party. He says they were still together at this party. He thinks he saw them both at parties at that house about two times that semester.

The house is old and small. You can hear through the walls. He knows this because once his roommates heard him in the bathroom with a girl and he got made fun of for it. He slept over this night and so did both MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) He never heard anything unusual and never heard anyone say no or stop. The music was not very loud.

He said he usually sleeps in the living room. If he was in the back area he was probably waiting for the bathroom. He does not recall seeing MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) go into a back room. He said couples would sometimes go into back rooms for privacy.

He was under the impression MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) were still a couple at this party. He recalls this specific party because there was a 5K the next morning. He never heard them argue and never witnessed an argument.

MIDN 5 U.S.C. 552(b)(6)

She has known MIDN 5 U.S.C. 552(b)(6) since first year and they have been friends. She knows MIDN 5 U.S.C. 552(b)(6) because she dated MIDN 5 U.S.C. 552(b)(6)

She recalls the party in early Nov 12 at the sponsor's house of MIDN 5 U.S.C. 552(b)(6) She recalls both MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) were present.



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She saw them come into the party together, which threw her off because she thought they had broken up so she assumed they must have gotten back together. At the party, she saw them kissing.

She did not see MIDN 5 U.S.C. 552(b)(6) drinking, but assumes she was. MIDN 5 U.S.C. 552(b)(6) appeared to be in control of her faculties. She left before midnight because she did not have overnight liberty.

She does not recall MIDN 5 U.S.C. 552(b)(6) talking to her about MIDN 5 U.S.C. 552(b)(6) during this time. She does not recall being asked by MIDN 5 U.S.C. 552(b)(6) if MIDN 5 U.S.C. 552(b)(6) was dating someone else. Overall, she thinks the relationship seemed normal, healthy. One time MIDN 5 U.S.C. 552(b)(6) approached her about the relationship and said her parents did not approve of the relationship.

*[I don't think this witness added much value.]*

MIDN 5 U.S.C. 552(b)(6)

He is roommates with MIDN 5 U.S.C. 552(b)(6)

He recalls the party in Nov 12. They slept over and then returned the next day. MIDN 5 U.S.C. 552(b)(6) drove, he was in the front passenger seat, 2 guys were in backseat (5 U.S.C. 552(b)(6)), and MIDN 5 U.S.C. 552(b)(6) was also in the backseat. It took 10-15 mins to return. He does not recall anything unusual. He remembers having to rush to get back because he and MIDN 5 U.S.C. 552(b)(6) had a 5 K race to run. He went to change first because MIDN 5 U.S.C. 552(b)(6) had to stay in the car. It took 3-4 mins to change. He does not recall dropping MIDN 5 U.S.C. 552(b)(6) off first.

They parked the car at the horseshow because their room was near the stairs. He darted out of the car and was not aware what anyone else was doing.

*[I don't think this witness added much value.]*

MIDN 5 U.S.C. 552(b)(6)

His sponsor is 5 U.S.C. 552(b)(6) (sp?). He lives in Edgewater, MD. They often had get-togethers at his house after football games. Parties were usually 15 to 20 people and were usually all 14<sup>th</sup> Co people. They had a party every home game that season. The music was not too loud because of the neighbors. You could hear conversations.

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He recalls MIDN 5 U.S.C. 552(b)(6) attending only one party at this house. He does not know of people hooking up at this house.

*[I don't think this witness added much value.]*

Ms. 5 U.S.C. 552(b)(6)

She is the sponsor mother for MIDN 5 U.S.C. 552(b)(6) and has been since his first year at USNA. Sponsoring is a formal process. She met him in Aug 2010. Every MIDN has to have a sponsor family at arrival and then it is up to MIDN to what extent they are involved thereafter. The Sponsor family meets them at arrival, they get to know each other, and then up to the MIDN to reach out to you to continue the relationship. Sponsors go through training. Goal is to give MIDNs a place to go when they leave the academy for a little time on short weekends. It's a home away from home for the MIDN. Sometimes they sleep over and eat dinner, etc.

MIDN 5 U.S.C. 552(b)(6) has become an integral part of their family and he is very supportive to her 3 sons. She has met his girlfriends over the years. She has met MIDN 5 U.S.C. 552(b)(6). She first met her late spring of 2012, not sure on dates. She has spent the night at their house frequently. MIDN 5 U.S.C. 552(b)(6) is like a son to her. MIDN 5 U.S.C. 552(b)(6) was in their home a lot, and was very familiar in their house.

She observed MIDN 5 U.S.C. 552(b)(6) and MIDN 5 U.S.C. 552(b)(6) often in her home. They would cook at her house, watch movies, play with the kids, play with the dog, just be with them - they were a part of the family. MIDN 5 U.S.C. 552(b)(6) used the basement - guestroom, TV room, bathroom - like a flop house for him. Her three kids were in and out of the space. To her knowledge, MIDN 5 U.S.C. 552(b)(6) slept on the couch and MIDN 5 U.S.C. 552(b)(6) slept on the bed, but she did not chaperone down there. They could have slept separately. Other of his friends came over too.

They had a normal loving friendship relationship. They were comfortable with each other. MIDN 5 U.S.C. 552(b)(6) seemed to really enjoy being part of the family with him. The relationship seemed to be mutual. MIDN 5 U.S.C. 552(b)(6) is very affectionate. MIDN 5 U.S.C. 552(b)(6) would sit on his lap. The witness was aware because she has the 3 kids. She and her husband even discussed the amount of PDA between the two of them and had some concerns but never ended up discussing with MIDN 5 U.S.C. 552(b)(6) or MIDN 5 U.S.C. 552(b)(6). She never thought their relationship was abusive. She never heard or saw MIDN 5 U.S.C. 552(b)(6) yelling at MIDN 5 U.S.C. 552(b)(6). They stopped dating

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around Nov or Dec 2012. MIDN 5 U.S.C. 552(b)(6) was still consistently around her house until this time.

Regarding the Christmas party at her work, MIDN 5 U.S.C. 552(b)(6) had volunteered that her acapella singing group could come sing at the party for her. It was MIDN 5 U.S.C. 552(b)(6)'s idea. At the time MIDN 5 U.S.C. 552(b)(6) offered to sing at the party, she was still dating MIDN 5 U.S.C. 552(b)(6). As the party approached, she coordinated with her to discuss the details. [MIDN 5 U.S.C. 552(b)(6) stated that Ms. Van Besien asked her to get the singing group to come to the party.] MIDN 5 U.S.C. 552(b)(6) contacted her in Sep of 13 and asked to see the family again. She said she wanted to reach out, said she missed them, and offered to help with the kids.

Witness Availability.

MIDN 5 U.S.C. 552(b)(6) is available. She reports to TBS (Quantico) on UNK date.  
MIDN 5 U.S.C. 552(b)(6) is available. She reports to Pensacola on 3 Oct 14.  
FN 5 U.S.C. 552(b)(6) is available. He is attached to USS MASON (Norfolk).  
Mr. 5 U.S.C. 552(b)(6) is available. He lives in Smith Station, Alabama.  
MIDN 5 U.S.C. 552(b)(6) is available. She reports to Supply Corps school Jan 15.  
MIDN 5 U.S.C. 552(b)(6) is available. He reports to Nuke school Jul 14.  
MIDN 5 U.S.C. 552(b)(6) is available. He reports to TBS on 6 Dec 14.  
MIDN 5 U.S.C. 552(b)(6) will be out of area. She plans to be in Korea between graduation and Jun 14. She reports to San Diego for training on 23 Jun 14 and then reports to USS GERMANTOWN (Sasebo) in Sep 14.  
MIDN 5 U.S.C. 552(b)(6) is available. He reports to TBS on 10 Jun 14.  
MIDN 5 U.S.C. 552(b)(6) will be out of area. He goes to Dominican Republic for leave on 25 May for 10 days and then reports to USS RUSHMORE (San Diego) by 17 Jun 14.  
Ms. 5 U.S.C. 552(b)(6) She has a vacation in July but would be otherwise available. She lives in Annapolis, MD.

Summary of elements of offenses.

Charge I, Specification 1 is that MIDN 5 U.S.C. 552(b)(6) committed a sexual act upon MIDN 5 U.S.C. 552(b)(6) in October 2012 by penetrating her vulva with his penis and causing bodily harm to her (the penetration without her consent).

Charge I, Specification 2 is that MIDN 5 U.S.C. 552(b)(6) committed a sexual act upon MIDN 5 U.S.C. 552(b)(6) in November 2012 by penetrating her vulva with his penis and causing bodily harm to her (the penetration without her consent).

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Charge I, Specification 3 is that MIDN <sup>5 U.S.C. 552(b)(6)</sup> committed a sexual act upon MIDN <sup>5 U.S.C. 552(b)(6)</sup> in November 2012 by penetrating her vulva with his penis and causing bodily harm to her (the penetration while she was incapable of consenting due to impairment by alcohol).

Charge II, sole Specification is that MIDN <sup>5 U.S.C. 552(b)(6)</sup> committed sodomy with MIDN <sup>5 U.S.C. 552(b)(6)</sup> in May 2012 by force and without her consent.

Objections.

Both sides were advised to provide all objections in writing within 48 hours of the close of the hearing. No written objections were submitted after the close of the hearing, though numerous objections were made during the hearing. Among the objections made by the Defense were that they objected to the MRE 412 prohibition in the appointing order, objected to me as the IO based on my willingness to follow the MRE 412 prohibition in the appointing order<sup>1</sup>, and objected to MIDN <sup>5 U.S.C. 552(b)(6)</sup>'s invocation of both the attorney-client privilege and the chaplain privilege. The majority of the other objections made during the hearing pertained to relevance and issues such as "asked and answered".

Written comments on the evidence were submitted by both Government and Defense and are attached exhibits 25 and 26 to this report. The Defense's original objections regarding MRE 412 are also attached as IO Exhibits 11 and 12. The Defense submitted additional matters, essentially a renewal of their MRE 412 objection with new information, on 7 May 14, which is included as exhibit 27.

Legal Issues.

The date of Charge II is incorrect on the charge sheet. It says May 2011 but should actually say May 2012. This error was identified on day one of the Article 32 and both counsel for the Government and the Defense were notified of this error. The Defense and the accused were explicitly advised by the IO, on the record, that the actual offense

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<sup>1</sup> The Defense Counsel voir dired me regarding my experience as a JAG and my experience with MRE 412 as both a Trial Counsel and Defense Counsel. I stated that, despite my recollection of previously using MRE 412 evidence in an Art 32, I would follow the directions contained in my appointing order. Before the Art 32, I clarified and confirmed the CA's directions because I had never heard of this prohibition before. See exhibit 24. The Defense objected to my serving as the IO on the grounds that I was willing to follow the appointing order. The CA denied the Defense request to replace me and also denied the request to amend the appointing order.

being investigated at this hearing was for May 2012. The Defense indicated that they understood and were aware that the sodomy allegation was pertaining to a May 2012 visit to New York City. The Government indicated that it would discuss with the Convening Authority and have the charge sheet corrected.

One of the exceptions to MRE 412 is possibly relevant to this case. MRE 412, referred to as the "rape shield" rule, has an exception regarding "evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent". See MRE 412(b) (1) (B). Based upon the Appointing Order and my subsequent confirmation with the CA's SJA's office, see IO Exhibit 2 and 24, I did not permit any questioning or evidence that fell under this or any exception to MRE 412. Had it not been for the prohibition in the appointing order, I would have been inclined to hold a closed hearing, in accordance with MRE 412, to determine if there was relevant evidence that properly fell under the exception. Without hearing any of this potential evidence, I cannot surmise whether any of it exists and, if so, whether any of it would assist the Defense.

Notwithstanding the prohibition on MRE 412 evidence, the fact that the two parties had a prior consensual sexual relationship was freely offered by MIDN <sup>5 U.S.C. 552(b)(6)</sup> on direct exam by the Government counsel and in the presence of the Victim's Legal Counsel. The original consensual sexual encounter that led to the May 2012 incident was readily discussed and the Defense was able to extensively cross examine the witness on this incident. No other prior consensual sexual acts or behavior was discussed during the hearing.

#### Reasonable Grounds

Rule for Court-Martial (RCM) 405(j) (2) (H) requires that I provide an assessment of whether reasonable grounds exist to believe that the accused committed the offenses alleged. According to RCM 302, "'reasonable grounds' means that there must be the kind of reliable information that a reasonable, prudent person would rely on which makes it more likely than not that something is true. A mere suspicion is not enough but proof which would support a conviction is not necessary." Using this standard, I find that there are not reasonable grounds to believe that the accused committed the offenses alleged. After hearing all of the testimony of MIDN <sup>5 U.S.C. 552(b)(6)</sup> and viewing it in the light most favorable to the government and without regard to any affirmative defenses, I do not believe that a reasonable, prudent

person would find reliable evidence that convinced them it was more likely than not that the events unfolded as alleged.

Recommendation on disposition

I recommend that none of the charges be referred to any forum and, instead, that all of the charges be dismissed. The nature of these charges would be inappropriate at any forum other than General Court-Martial (GCM) and I do not recommend that any of them be referred to GCM. The burden of proof at GCM is beyond a reasonable doubt. I will articulate below why I do not believe that there is any chance of a conviction at GCM on any of the charges and, thus, why I recommend dismissal of all charges.

This case is quintessentially a he said-she said case. They both admit that they had sexual contact on at least two of the three specific instances in question. There were no other witnesses present at the time of the contact. These cases turn on the credibility of the alleged victim and on the circumstances of when and how the case was reported, as well as how the alleged victim interacted with the accused after the alleged offense(s). Following a review of all the testimony and all the evidence presented, I find that neither MIDN <sup>5 U.S.C. 552</sup> nor her account of the events is credible.

MIDN <sup>5 U.S.C. 552</sup> was deliberately vague and evasive in response to many of the questions she was asked. She tried to avoid several questions by stating that she believed the question was irrelevant. She also amended her direct examination testimony on several occasions after being presented with contrary evidence during cross examination. Although no memory is perfect and a significant period of time had elapsed, it appeared that MIDN <sup>5 U.S.C. 552</sup> had been trying to rewrite history to minimize her romantic pursuit of or friendly interaction with MIDN <sup>5 U.S.C. 552(b)(6)</sup> following each of the alleged assaults. As an example of her evasive testimony during cross examination, she responded to several questions by saying words to the effect of:

"if you have evidence that says I did, then I did, but I don't remember";

"you don't have any evidence that proves that I did"; or

"if they asked, I did not deny it".

MIDN <sup>5 U.S.C. 552</sup> invoked her Art 31b right to remain silent three separate times. Although well within her rights to do so, and one cannot infer any guilt regarding the nature of what she invoked her rights for, it indicated a lack a transparency and created some doubt about the

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events in question. Two of the invocations likely pertain to irrelevant things that would not be admissible at trial anyway (prior unsubstantiated conduct offense for allegedly lying and prior illegal drug use with subsequent lying and malingered to avoid urinalysis). However, one of the invocations pertained to the circumstances of her trip to NYC (May 2012) and whether she was on authorized liberty to be in NYC and for how many days. This may possibly be considered relevant at a potential trial. She also attempted to invoke her right to remain silent when she was not even being asked an incriminating question, such as do you know a person named 5 U.S.C. 552(b)(6).

MIDN 5 U.S.C. 552(i) stated that she did not know a boyfriend could rape a girlfriend until Nov 12. She denied ever learning about or receiving training on relationship rape for her first 2 years at USNA. She stated that she did not understand that a boyfriend could rape a girlfriend until a combination of factors, including Ms. 5 U.S.C. 552(b)(6) explaining it to her in Nov 12 and eventually receiving SAPR training at USNA that showed a rape at a party. Her explanation that she did not realize that she had been assaulted any time until she saw a SAPR training that depicted three elements (a party, with alcohol, and 2 people who were not dating) and then realized that these 3 factors were present at the Nov 12 party is incredulous. While it is entirely possible that she just did not want to report it until she felt comfortable, however long that took, her formulaic explanation for taking so long to recognize and/or report the 3 offenses seems manufactured.

In addition to the credibility problems with the sole Government witness, there were also several notable inconsistencies between her testimony and that of many, if not all, of the Defense witnesses. The Defense witnesses, by and large, painted a picture of MIDN 5 U.S.C. 552(i) as repeatedly trying to get back together with MIDN 5 U.S.C. 552(b)(6) - even after the November 2012 party - and of her being upset that he was seeing or dating other women. The Defense will readily be able to present a case that indicates that MIDN 5 U.S.C. 552(i) had a motive to fabricate, which was purportedly her anger at MIDN 5 U.S.C. 552(b)(6) seeing other women. The evidence showed that each of the allegations of sexual assault coincide with an allegation of cheating and a break up.

MIDN 5 U.S.C. 552(i) also testified that, at each of the three encounters, she said "no" or "stop" two or three times each. She testified that after saying this, on each of the three occasions, she "gave up". She testified that she did not protest forcefully at the May 12 incident or at the Oct 12 because she did not want to make MIDN 5 U.S.C. 552(b)(6) mad

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and because they were dating so she thought he could do whatever he wanted to her. She also testified that she did not think or know that she had been assaulted after either of these incidents. She stated that she could have gotten away from him at each assault if she had wanted to but did not try to because she did not want to make him mad. She testified that she could have yelled loudly and been heard by someone at the Oct 12 or Nov 12 incidents, but did not yell because she did not want to make MIDN <sup>5 U.S.C. 552(b)(6)</sup> mad or cause a scene. She maintained that she was never afraid of him and never believed that she was in any physical danger. Although the law does not require a victim to physically fight back or scream for help, the Government would have to prove that the accused knew or should have known that she did not or could not consent. The evidence indicates that the defense will be able to raise a strong mistake of fact of consent affirmative defense.

Considering the totality of the evidence and circumstances, including MIDN <sup>5 U.S.C. 552(b)(6)</sup>'s credibility problems, her inconsistencies with many of the other witnesses (who were consistent with each other), her possible motive to fabricate, and the likely successful affirmative defense of mistake of fact of consent, I do not believe there is any chance of successful prosecution of this case.